action. If that had been the question, I might have agreed with it, not on the ground of a deliberate attempt to avoid the legal effect of Chua J's, but that it simply amounted to an attempt to do so.

On the issue of res judicata, the submission of counsel for the defendants was unfocused, but it could only have been that the issue whether or not the defendants were entitled to unconditional leave to defend had been decided by Chua J and that the plaintiffs were bound by this decision. This was, in substance, a submission on issue estoppel, as contrasted with cause of action estoppel which, in view of O 21 r 2(2), could not possibly apply to the fresh action. I thought that there might be some substance in this submission if confined to the issue that the plaintiffs were bound by Chua J's decision, but I did not think that it was necessary for me to rest my decision on this basis.

The reason was that even if I had assumed that there was issue estoppel, it could not transform a decision that there was an arguable defence into one that there was a good and valid defence. The application was misconceived as a result of this confusion.

Appeal dismissed.

Solicitors: *Godwin & Co; Manjit Darshan & Partners.*

Reported by *Yap Shao Sin*

Sri Jaya Sdn Bhd v Chip Hua Contractors Pte Ltd

HIGH COURT (SINGAPORE) — SUIT NO 1822 OF 1978
RAJAH J
28 SEPTEMBER 1990

Land Law — Agreement for sale and purchase of land — Purchaser and sub-purchasers defaulted — Whether purchaser liable for payments stipulated under the agreement — Remedies of the vendors

Contract — Agreement for sale and purchase of land — Construction of terms

The plaintiffs were the registered owners of land comprising 32 units of flats ('the property'), and the property was mortgaged ('the mortgage') to a bank. The plaintiffs and the defendants entered into an agreement ('the agreement') for the sale of the property from the plaintiffs to the defendants. Under the terms of the agreement, the defendants were to be responsible for (i) certain payments of interests due under the mortgage and (ii) payment of service charges to the plaintiffs for the flats comprised in the property.

The defendants sold various units in the property to 20 sub-purchasers. The sub-purchasers entered into tripartite agreements with the defendants and the plaintiffs. Eighteen of the 20 sub-purchasers failed to make payment of the full purchase price of their purchase of the respective units.

The defendants failed to pay the plaintiffs the full purchase price of the property, the interest payments on the mortgage and the service charges.

[*Editorial Note*: The defendants have appealed to the Court of Appeal vide Civil Appeal No 91 of 1990.]

Held, allowing the plaintiffs' claim:

(1) The defendants had breached the express terms of the agreement regarding payment of interest on the mortgage and the service charges on the flats. The plaintiffs' claim be allowed with interest at 8%.

(2) As regards the 12 units not sold by the defendants, the defendants not having carried out their part of the bargain, an order be made that the plaintiffs be given possession of the unsold units forthwith.

(3) As regards the 20 units already sold and occupied, damages for wrongful continued possession of the 20 units was ordered against the defendants. Damages was to be assessed by the registrar.

SH Almenoar for the plaintiffs.
Denis Tan (*Jeffrey Ching* with him) for the defendants.

Cur Adv Vult

Rajah J: The plaintiffs are registered owners of the land known as lot 2990 of mukim XXIV together with a block comprising 32 units of flats (Block A) erected thereon (hereafter referred to as 'the premises'). The premises were and are mortgaged to the United Malayan Banking Corp Bhd.

The plaintiffs and defendants entered into an agreement dated 11 June 1975. By this agreement the plaintiffs agreed to sell and the defendants agreed to buy the said flats for $28,500 per flat thus totalling $912,000 for the 32 flats. The sale and purchase was upon the terms and conditions as set out in the said agreement.

Clause 3 of the said agreement provides as follows:

> The lessee hereby agrees with the lessor that the lessee will be responsible for payment of all interest calculated on the said sum of $912,000 which shall become due under the mortgage as from the date hereof. All interest due but not paid before shall be for the account of the lessor. If the lessee shall make default to pay the interest aforesaid for one month at the percentage of the mortgage calculated on the purchase price of $912,000 then the lessor will be entitled to treat this agreement as having been repudiated by the lessee and to forfeit the deposit and all other payments made by the lessee.

Clause 4 of the said agreement provides as follows:

> After payment of the ten percent (10%) deposit by the lessee to the lessor, the lessee is liable to pay interest as charged by the mortgagees for a period of one year and if the lessee shall make default in payment of interest under the mortgage for a period of three consecutive months the lessor shall be entitled to treat this agreement as having been repudiated by the lessee and to forfeit the deposit and all other payments made by the lessee. However if the lessee shall settle the full amount of $912,000 earlier than

the said period of one year then the lessee shall not be liable to pay further interest due under the mortgage.

Clause 9 of the said agreement provides as follows:

In consideration of the service provided by the lessor under clause 8 hereof, the lessee shall pay to the lessor the sum of $25 per month for each flat comprised in Block from the date of this agreement subject to amendments from time to time.

The defendants continued in possession of the said premises upon signing of the said agreement (they had in fact earlier been in possession as contractors of the premises).

They paid the 10% deposit ($91,200) as required by the agreement. On 13 June 1975 they paid $44,600 to the plaintiffs representing the initial 5% deposit. Subsequently on 15 July 1975, 29 July 1975 and 12 September 1975 the second 5% was paid pursuant to cl 2(b) of the said agreement.

The defendants then attempted to sell the various units to sub-purchasers. In the event, only 20 sub-purchasers agreed to and entered into sale and purchase agreements with the defendants.

The sub-purchasers also entered into tripartite agreements with (1) the defendants, (2) the sub-purchaser, and (3) the plaintiffs.

M/s Almenoar & Co acted for the plaintiffs and the defendants in the sale and purchase of the said premises, for the defendants in the sub-sales of the various units to the sub-purchasers and for the plaintiffs and defendants in the tripartite agreements.

The amounts received from the third party purchasers (for the purchase of individual flats as set out in P5) amount to $337,500. Except for two sub-purchasers the balance 18 of the 20 sub-purchasers failed to make payment of the full purchase prices for their respective purchases.

The defendants themselves failed (1) to pay the full purchase price of $912,000; (2) to pay any interests; (3) to pay for the service charges under cl 9 of the agreement.

The above material facts are not disputed, admitted or otherwise proved on a balance of probabilities.

The plaintiffs' case is essentially that the defendants have breached cl 3 of the said agreement and further or in the alternative the defendants have breached cl 4 of the said agreement. The plaintiffs also claim under cl 9 of the said agreement.

Under cl 3 of the said agreement the defendants are liable to pay for all interest calculated on the sum of $912,000 which shall become due under the mortgage as from the date of the agreement, namely, 11 June 1975. After payment of the 10% deposit by the defendants to the plaintiffs under cl 4 of the agreement, the defendants are liable to pay interest as charged by the mortgagees for a period of one year to the plaintiffs. The last instalment of the 10% deposit was paid on 12 September 1975. Therefore the amount payable to the plaintiffs by the defendants from 11 June 1975 to 12 September 1975 is $102,220.38 plus a further sum for three months. Under cl 9, in consideration of the services provided by the plaintiffs under cl 8, the defendants were to pay the plaintiffs $25 per month for each flat comprised in the block from the date of this agreement. The defendants deny liability on this score and they allege that the plaintiffs had indicated that they would collect the service charges from the sub-purchasers. This does not absolve the defendants from their liability to pay the plaintiffs under the agreement in the event that the sub-purchasers do not pay. The plaintiffs claim service charges calculated with effect from 31 May 1978 and continuing at the rate of $25 per month per flat.

The claim of the plaintiffs as set out in para 7 of the statement of claim is allowed with interest at 8%

Of the 32 units of flat, 12 units have not been sold by the defendants. The units not sold are set out in para 9 of the statement of claim. The 20 units sold are all occupied. The defendants not having carried out their part of the bargain the order will be that the plaintiffs be given possession of the unsold units forthwith. There will also be damages for wrongful continued possession of the flats mentioned in para 9 of the statement of claim, such damages to attract 8% interest. Damages to be assessed by the registrar. Costs to the plaintiffs.

Claim allowed.

Solicitors: *Almenoar & Co; Toh Tan & Partners.*

Reported by *Teoh Ai Lin*